1990

The State of Utah v. Paul Edwin Woolley : Brief of Appellant

Utah Court of Appeals

R. Paul Van Dam; Attorney General; Attorney for Appellee.
Charles F. Loyd, Jr.; Joan C. Watt; Salt Lake Legal Defender Association; Attorneys for Appellant.

IN THE COURT OF APPEALS OF THE STATE OF UTAH

~~THE~~ STATE ~~OF UTAH,~~ 900012-CA	:	
Plaintiff/Appellee,	:	
v.	:	
PAUL EDWIN WOOLLEY,	:	Case No. 900012-CA Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLANT

Appeal from a judgment and conviction for two counts of Forgery, a third degree felony, in violation of Utah Code Ann. § 76-6-501 (1953 as amended), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable J. Dennis Frederick, Judge, presiding.

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Established in 1965

October 2, 1990

Ms. Mary Noonan
Utah Court of Appeals
400 Midtown Plaza
230 South 500 East
Salt Lake City, Utah 84102

Dear Ms. Noonan:

Re: State v. Woolley
Case No. 900012-CA

Pursuant to Rule 24(j), Utah Rules of Appellate Procedure, Appellant, Paul Edwin Woolley, cites as supplemental authority, State v. Sexton, 787 P.2d 1097, 1099 (Ariz. App. 1990).

Appellant cites State v. Sexton in support of his argument in his opening brief at 7 that the use of a peremptory challenge to remove a juror who should have been removed for cause constitutes reversible error and his argument during oral argument on October 1, 1990 that the decision in Ross v. Oklahoma, 487 U.S. 81, 108 S.Ct. 2273, 101 L.Ed.2d 80 (1988), is not applicable under the laws of the State of Utah.

Very truly yours,

Joan C. Watt
Attorney for Appellant

JCW:kll

CERTIFICATE OF DELIVERY

DELIVERED original and seven copies of the foregoing to the Utah Court of Appeals, 400 Midtown Plaza, 230 South 500 East, Salt Lake City, Utah 84102, and a copy of the foregoing to Dan R. Larsen, Assistant Attorney General, Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this _____ day of October, 1990.

_____

IN THE COURT OF APPEALS OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	
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JURISDICTIONAL STATEMENT

Jurisdiction is conferred on this Court pursuant to Utah Code Ann. § 77-35-26(2)(a) (Supp. 1989) and Utah Code Ann. § 78-2a-3(2)(f) (Supp. 1989), whereby a defendant in a district court criminal action may take an appeal to the Court of Appeals from a final judgment and conviction for any crime other than a first degree or capital felony.

STATEMENT OF THE ISSUE

Did the trial court commit prejudicial error in denying Appellant's challenge of a juror for cause?

STATEMENT OF THE CASE AND NATURE OF THE PROCEEDINGS

This is an appeal from a judgment and conviction for two counts of Forgery, a third degree felony, in violation of Utah Code Ann. § 76-6-501 (1953 as amended). A jury found Mr. Woolley guilty of both counts after a trial held on October 31 and November 1, 1989 in the Third Judicial District Court, Salt Lake County, State of Utah, the Honorable J. Dennis Frederick, Judge, presiding.

STATEMENT OF THE FACTS

On August 28, 1989, at about 1:30 p.m., Steven Blaylock placed his checkbook in the center console of his Ford Bronco truck (TI 78). (Volume I of the transcript is cited herein as TI, Volume II is cited as T2.) At about 4:30 p.m. on that same day, he noticed that the checkbook was gone and called his bank to stop payment on the missing checks (TI 80). The missing checks were numbered 710 through 725 (TI 78).

At about 6:00 p.m. on August 28, 1989, Peggy Kobashigawa, a clerk at the courtesy booth of the Smith's Food King located at 828 South 900 West in Salt Lake City, cashed a check in the amount of fifty dollars for Appellant (TI 57). The check was made out to Appellant and Appellant showed Ms. Kobashigawa his Smith's check cashing card and his Utah identification card in order to cash the check (TI 59-60). The check was drawn on the account of Steven Blaylock and numbered 713 (TI 57, 58).

Ms. Kobashigawa testified that two or three hours before Mr. Woolley cashed the fifty dollar check, he had approached her and attempted to cash a check made out to him for one hundred dollars. She told Mr. Woolley that she could not cash a two-party check for more than fifty dollars (TI 57).

About an hour or two after Ms. Kobashigawa cashed the fifty dollar check, Mr. Woolley returned to the store and attempted to cash another fifty dollar check. Ms. Kobashigawa refused to cash the check, telling Appellant that she would cash only one fifty dollar check for an individual in a twenty-four-hour period (TI 63).

On the morning of August 29, 1989, Mr. Woolley asked Carol Goode, a checker in the same Smith's Food King, to cash the second fifty dollar check for him (TI 95). Mr. Woolley again presented his Smith's card and Utah identification card (TI 95-6). Because the ZIP code on the check was outside the store's area, Ms. Goode called for a manager to approve the check (TI 96).

Officers called to the store arrested Mr. Woolley shortly thereafter. According to one of the arresting officers, Mr. Woolley stated that he had received the checks from Steven Blaylock in exchange for work he had done for Mr. Blaylock (TI 107). Mr. Woolley also told officers that he had cashed a check at the store the night before (TI 108).

The arresting officers contacted Mr. Blaylock, who immediately went to the Smith's store (TI 108). Mr. Blaylock indicated that he had not written the checks to Mr. Woolley; Mr. Woolley told the officers that the person representing himself to be Steven Blaylock who had written the checks was not the man who appeared at Smith's (TI 111).

Mr. Woolley had regularly frequented the Smith's where the checks were cashed for at least eighteen months (TI 145-6). The checks were made out to him and he used his identification in cashing them (TI 59, 95). He testified that he had been hired at the Utah State Employment Office by a man claiming to be Steven Blaylock to do two days of labor in Heber City. The man paid him with the one hundred dollar check, but when Mr. Woolley was unable to cash the check, the man wrote him two fifty dollar checks instead

(TI 152-3, 155, 156-7).

The State charged Mr. Woolley with two counts of Forgery.

During voir dire, the trial judge asked the jury panel whether any of the jurors had "been the victim of a forgery or a crime involving deception or fraud" (TI 32). Jurors Hoyt, VanLeeuwen and Tyler answered that they had been victims of such a crime (TI 33). Mr. Hoyt stated that his wallet was taken while he was in California and his credit card had been used (TI 33). Mr. VanLeeuwen stated that he "was in Brazil at the time that they stole checks and wrote about five grand on [his] account" (TI 33). Mr. Tyler stated that some checks were stolen from him in 1961 when he lived in Los Angeles and someone had forged his signature on some of those checks (TI 33). (See Addendum B for transcript of entire voir dire covering this issue.)

Rather than asking the three jurors what their reactions were to the forgeries, the trial judge asked whether the prior experience would preclude them from deciding the instant case based only on the evidence before them (TI 33). None of the three indicated that the prior experience would interfere (TI 33).

At the conclusion of voir dire, during a bench conference, defense counsel challenged all three jurors (TI 35, 74-5). The trial judge initially struck all three jurors for cause, then reinstated Juror VanLeeuwen (R 46; TI 74-5). The court's rationale for reinstating Mr. VanLeeuwen was that because "Mr. VanLeeuwen's experience did occur in a foreign country, that the objection to striking at least Mr. VanLeeuwen from that group for cause was well

taken . . ." (TI 76).

The jury convicted Mr. Woolley of both counts (R 74, 75). The trial court sentenced Mr. Woolley to serve zero to five years at the Utah State Prison on each count, such sentences to be served concurrently.

SUMMARY OF THE ARGUMENT

The trial court abused its discretion in failing to excuse for cause a juror who had been a victim of a crime identical to the crime with which Appellant was charged. The similarity of the crimes raised an inference of bias which required that the trial judge excuse the juror or probe further. The fact that the trial judge excused two other jurors who gave similar answers to that of the challenged juror, and initially excused the challenged juror, then changed his mind, demonstrates the error in retaining the juror. Because Appellant was required to use a peremptory challenge against the juror who should have been excused for cause, Appellant is entitled to a new trial.

ARGUMENT

POINT

THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO EXCUSE FOR CAUSE A JUROR WHO HAD BEEN THE VICTIM OF AN IDENTICAL CRIME.

Rule 18, Utah Rules of Criminal Procedure provides in pertinent part:

> (e) The challenge for cause is an objection to a particular juror and may be taken on one or more of the following grounds:
>
> . . . . .
>
> (14) that a state of mind exists on the part of the juror with reference to the cause, or to either party, which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals or common notoriety, if it satisfactorily appears to the court that the juror can and will, notwithstanding such opinion, act impartially and fairly upon the matter to be submitted to him.

The sixth amendment to the United States Constitution and Article I, Section 12 of the Utah Constitution guarantee an accused in a criminal proceeding the right to a trial by an impartial jury.[1] In an effort to comply with this constitutional provision, the legislature enacted Utah Code Ann. § 77-35-18 (1982).[2] State v. Brooks, 563 P.2d 799, 801 (Utah 1977) ("Brooks I").

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[1] The Utah Supreme Court has repeatedly emphasized the importance of an impartial jury in a criminal proceeding and has reversed criminal convictions based solely on the appearance that such right may have been jeopardized. See State v. Pike, 712 P.2d 277, 279-81 (Utah 1988) (discussing rationale for presumption of prejudice where improper contact between jurors and witnesses or court personnel occurs); see also State v. Cantu, 778 P.2d 517 (Utah 1989) (appellant entitled to new trial where prosecutor struck Hispanic juror to get even with defense counsel who had insisted that Hispanics be included on panel).

[2] The Utah Supreme Court adopted the rule as Rule 18, Utah Rules of Criminal Procedure.

It is well established that a party is entitled to use his or her peremptory challenges on impartial jurors. Brooks I, 563 P.2d at 802-3; Crawford v. Manning, 542 P.2d 1091, 1093 (Utah 1975); State v. Brooks, 631 P.2d 878, 883 (Utah 1981) ("Brooks II"). Prejudicial error occurs where a party is required to use a peremptory challenge to exclude a juror who should have been excused for cause. Crawford at 1093; State v. Bailey, 605 P.2d 765, 768 (Utah 1980); Jenkins v. Parrish, 627 P.2d 533, 537 (Utah 1981); State v. Jones, 734 P.2d 473, 474 (Utah 1987). The rationale for finding reversible error in any case where a defendant is forced to use a peremptory challenge to exclude a juror who should have been excused for cause is:

> Peremptory challenges form an effective method of assuring the fairness of a jury trial. Hence, forcing a party to use his peremptory challenges to strike jurors who should have been stricken for cause denies the litigant a substantial right.

Jenkins, 627 P.2d at 537, quoting Waskel v. Frankel, 569 P.2d 230, 232 (Ariz. 1977). In State v. Bailey, the Utah Supreme Court pointed out that:

> [F]ailure to excuse the challenged juror for cause was prejudicial and in effect it deprived defendant of one of his statutory peremptory challenges . . . .

Bailey, 605 P.2d at 768, quoting State v. Moore, 562 P.2d 629, 631 (Utah 1977).

The Utah Supreme Court has defined juror impartiality as a "mental attitude of appropriate indifference." Brooks I, 563 P.2d at 802. As the Utah Supreme Court noted:

> Chief Justice Marshall, presiding over the trial of Aaron Burr in 1807, defined an impartial jury as one composed of persons who "will fairly hear the testimony which may be offered to them, and bring in their verdict, according to that testimony, and according to the law arising on it."

State v. Bailey, 605 P.2d at 767, quoting Burr's Trial, p. 415. The Bailey court further quoted Marshall's test for impartiality which the United States Supreme Court embraced in Reynolds v. United States, 98 U.S. 145 (1878):

> [L]ight impressions which may fairly be supposed to yield to the testimony that may be offered; which may leave the mind open to a fair consideration of that testimony, constitute no sufficient objection to a juror; but that those strong and deep impressions which will close the mind against the testimony that may be offered in opposition to them; which will combat that testimony and resist its force, do constitute a sufficient objection to him (citation omitted).

The Utah Supreme Court has acknowledged that

> When comments are made which facially question a prospective juror's impartiality or prejudice, an abuse of discretion may occur unless the challenged juror is removed by the court or unless the court or counsel investigates and finds the inference rebutted.

State v. Cobb, 774 P.2d 1123, 1126 (Utah 1989); State v. Bishop, 735 P.2d 439, 451 (Utah 1988).

In State v. Bailey, the Court pointed out that despite comments from a juror which "facially raised a question of bias, the Court failed to further probe [the] matter." 605 P.2d at 768. The Court noted that the trial court had removed another juror for cause who had made statements which were similar to those of the challenged juror. The Court held that under such circumstances, "the District Court had a duty to remove [the jurors] for bias, or

investigate further until the inference of bias was rebutted . . . ." Id.

Hence, when a juror's comments "facially raise[] a question of bias," the court abuses its discretion if it fails to probe further into the matter. Bailey, 605 P.2d at 768.

Where an inference of bias is raised, it cannot be rebutted simply by the juror's statement that he or she can be fair. As the Court stated in State v. Jones, 734 P.2d at 475, citing Brooks II, 631 P.2d at 884: "When a prospective juror expresses an attitude of bias, a later assertion by the juror that he or she can render an impartial verdict cannot attenuate the earlier expressions of bias." Furthermore, "[a] statement made by a prospective juror that he intends to be fair and impartial loses its meaning in light of other testimony or facts that suggest bias." State v. Hewitt, 689 P.2d 22, 26 (Utah 1984). See also State v. Pike, 712 P.2d 277, 280 (Utah 1985) (juror may not be able to recognize influence of improper contacts); People v. Diaz, 200 Cal. Reptr. 77, 80 (Cal. App. 4 Dist. 1984) (recognition that statement regarding ability to deliberate impartially is self-serving).

In determining whether a trial judge erred in failing to excuse a juror for cause, "some deference must be accorded the discretion of the trial court." Jenkins, 627 P.2d at 536 (citations omitted). The Jenkins Court pointed out, however, that

> [n]evertheless, we also view the exercise of discretion in light of the fact that it is a simple matter to obviate any problem of bias simply by excusing the prospective juror and selecting another.

Id.

In order to properly exercise its discretion, the "trial court must determine by a process of logic and reason, based upon common experience, whether the juror can stand in attitude of indifference between the state and the accused. [citation omitted]" State v. Moton, 749 P.2d 639, 643 (Utah 1988).

In Brooks II, the Utah Supreme Court held that reversible error occurred where the trial judge failed to excuse for cause two jurors who had been victims of a crime similar to that with which the defendant was charged. Both jurors indicated that they had strong feelings about their experiences but felt that they could render a fair and impartial verdict based on the evidence. 631 P.2d at 882-3.

In Bailey, the trial court failed to excuse two jurors who indicated that they believed police officers are generally reliable observers or that the juror would rely on officers "a hundred percent." The Supreme Court held that an inference of bias was raised in both cases and that the trial court committed prejudicial error in failing to remove the jurors where the inference was not rebutted. See also Jenkins v. Parrish, 627 P.2d at 535-6 (juror who would give greater credit to testimony of doctor should have been excused for cause even though juror indicated she would accept other evidence even if it was not in accord with that of doctor); Brooks I, 563 P.2d at 801 (prejudicial error not to excuse jurors for cause where jurors were friends with witnesses even though jurors indicated that they would not let friendship interfere).

In the present case, the trial judge asked whether any jurors had "been the victim of a forgery or a crime involving deception or fraud" (TI 32). Three jurors raised their hands. The trial judge then stated, "Mr. Hoyt, you yourself have been the victim of such a circumstance?" (TI 32). Juror Hoyt responded, "Yes, sir. My wallet was taken when I was in California and my credit card was used" (TI 33).

The trial court asked Juror Hoyt no further questions and simply responded, "Very well, and Mr. VanLeeuwen?" Juror VanLeeuwen, the juror at issue in this case, stated, "I was in Brazil at the time that they stole checks and wrote about five grand on my account" (TI 33). Again, the trial judge directed no more individual questions to Juror VanLeeuwen, instead moving on to Juror Tyler, who stated that he "was robbed of some checks and a guy forged some checks on my[sic] when I lived in L.A. in '61" (TI 33).

The court directed one additional inquiry to all three jurors:

> Those three of you who have responded, recognizing that this is a different time and place and circumstance, would that experience, having been the victim of that type of a crime, affect your ability to be fair and impartial in this case, that is, would you be unable to set aside that experience and hear the evidence in this case and rule on the evidence based upon what you hear and the credibility of the witnesses? If you would not be able to do so, I want you to raise your hand.

(TI 33). None of the jurors raised his hand (TI 33).

At the conclusion of voir dire, the trial judge asked defense counsel whether he passed the jury for cause; defense

counsel responded that he did not (TI 35). The parties approached the bench, and defense counsel challenged Jurors Hoyt, VanLeeuwen and Tyler (TI 35, 74-5).

The trial judge initially struck all three jurors for cause, then reinstated Juror VanLeeuwen (R 46; TI 74-5). The court's stated rationale for leaving Mr. VanLeeuwen on the panel was that Mr. VanLeeuwen's experience had occurred in a foreign country and therefore would not affect his impartiality (TI 75).

Mr. VanLeeuwen's statement that he had been a victim of a crime identical to the crime charged in the instant case and further information that a significant amount of money had been involved in his case, raised an inference of bias. Like the jurors in Brooks II, Juror VanLeeuwen was a victim of a similar crime. See generally People v. Diaz, 200 Cal. Rptr. at 79-85 (discussing strong potential for bias where juror had previously been the victim of a crime similar to the crime with which defendant was charged).

Although the trial judge did not give Juror VanLeeuwen the opportunity to state his reaction to the crime or the depth of his feelings, the similarity of the crime along with the sum of money involved facially raised a question as to the juror's bias. The trial judge had an obligation to either excuse the juror for cause or investigate further. See Bailey, 605 P.2d at 768. The inference is not rebutted by Juror VanLeeuwen's failure to raise his hand in response to the judge's longwinded and somewhat confusing question to the group as a whole as to whether they could be impartial. See Jones, 734 P.2d at 475. The trial court's question failed to probe

further into the potential bias of the three jurors, and a self-serving response does not overcome the question of bias raised by the similarities. See Diaz, 200 Cal. Rptr. at 80.

The trial court excused for cause the two other jurors who indicated that they had been victims of similar crimes. Neither of those jurors raised his hand in response to the trial judge's rehabilitative question. In other words, neither juror indicated that his experience as a victim would interfere with his ability to be impartial. The trial judge had no additional information about the other two jurors or their reactions to the crimes which would indicate bias; the judge was simply aware that the jurors had been the victims of a similar crime. Nevertheless, the trial judge excused both for cause (R 46).

In State v. Jones, 734 P.2d 473, 475 (Utah 1987) n.1, the Court pointed out:

> We note that the trial court excused two other prospective jurors for cause because of their statements that they would expect the defendant to prove his innocence. Neither of these other jurors indicated that he had any direct ties to the murder victim or the victim's family, only that the juror held a generalized belief that a defendant should have to prove his innocence. This makes the trial court's failure to dismiss Ms. Opheikens for cause even more anomalous in light of her similar statement and her direct ties to the victim's family.

See also State v. Bailey, 605 P.2d at 768 (court failed to remove juror for cause who had agreed with comments of another juror who court did remove for cause; under such circumstances, the trial court "had a duty to remove [the juror] for bias, or investigate further until the inference of bias was rebutted . . . ").

The trial judge attempted to distinguish any possible bias on the part of Juror VanLeeuwen from the bias of the other two jurors on the basis that Mr. VanLeeuwen was the victim of a crime in a foreign country (TI 76). Such "distinction" was meaningless for two reasons. First, it is not clear from Mr. VanLeeuwen's statement that the crime occurred in a foreign country; the juror stated that he was in Brazil when his checks were stolen. A reasonable interpretation of the juror's statement is that he was in Brazil but the stolen checks and checking account were in Utah.[3] At the very least, if the trial court intended to rely on the foreign aspect of the crime, it was obligated to inquire further and clarify the ambiguities in the juror's statement.

In addition, there is no logical basis for assuming that a victim of an identical crime in a foreign country will be less biased. In actuality, based on the meager information gathered by the trial court, Juror VanLeeuwen was the most likely of the three jurors to be biased. Juror Hoyt was the victim of theft and use of his credit card, not checks. The inconvenience to Mr. Hoyt and the difficulty in controlling unauthorized use may well have been easier in Mr. Hoyt's case than in that of Mr. VanLeeuwen.[4] Although

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[3] If a checkbook were stolen in Brazil, it seems unlikely that anyone in Brazil would cash checks on a Utah bank. It also seems unlikely that the juror would have an account in Brazil. The most reasonable interpretation of Juror VanLeeuwen's statement was that while he was on a trip to Brazil, someone stole his checks in Utah and wrote five thousand dollars worth of checks on the account.

[4] If Mr. VanLeeuwen were in fact vacationing in Brazil and returned to an overdrawn checking account where numerous checks had [continued]

Juror Tyler was a victim of an identical crime, that experience occurred in 1961, almost thirty years ago. The remoteness of the incident suggests less possibility of bias. Although an inference of bias was raised in all three cases, of the three jurors, Juror VanLeeuwen logically should have been the trial judge's first choice as a person to excuse for cause.

It is important to note that the trial judge initially excused all three jurors for cause (R 46).[5] After crossing out Juror VanLeeuwen on the jury list as the second juror excused for cause, the trial judge reinstated him (R 46). Defense counsel was forced to use a peremptory challenge to remove the juror (R 46).

The jury panel consisted of eighteen people in this case (R 46). Pursuant to Rule 18(c)(2), Utah Rules of Criminal Procedure, each party in this case had four peremptory challenges; the statute requires eight jurors for a noncapital felony trial. Had the judge removed all three of the jurors challenged for cause, the State would have had to agree to waive a peremptory challenge or the court would have had to expend additional efforts to locate and voir dire at least one additional juror. Such inconvenience is not a valid ground for denying a challenge for cause.

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[4] [continued]
to be sorted out, Mr. VanLeeuwen probably experienced more of a headache as the result of being a victim of a similar crime than did Mr. Hoyt, who had a single credit card to deal with.

[5] The juror list indicates that Juror Tyler was the #1 juror excused for cause, Juror VanLeeuwen was the #2 juror excused for cause, and the Juror Hoyt was the #3 juror excused for cause.

In this case, the trial judge conducted a very limited voir dire of the panel. He refused to ask a number of questions propounded by defense counsel (R 99-103; TI 29, 30) and, when faced with answers from three jurors which raised a question of bias, failed to probe further, instead trying to quickly rehabilitate the jurors. Nevertheless, he removed two of the jurors but left a third who was distinguishable only by the fact that he was the most likely of the three to be biased.

The trial judge committed reversible error in failing to remove Juror VanLeeuwen for cause. As a result, Mr. Woolley is entitled to a new trial.

CONCLUSION

Appellant, PAUL EDWIN WOOLLEY, by and through counsel, CHARLES F. LOYD, JR. and JOAN C. WATT, respectfully requests that this Court reverse his conviction and remand his case for a new trial.

SUBMITTED this 17th day of May, 1990.

CHARLES F. LOYD, JR.
Attorney for Defendant/Appellant

JOAN C. WATT
Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, JOAN C. WATT, hereby certify that eight copies of the foregoing will be delivered to the Utah Court of Appeals, 400 Midtown Plaza, 230 South 500 East, Salt Lake City, Utah 84102, and four copies to the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this 17th day of May, 1990.

Joan C. Watt

JOAN C. WATT

DELIVERED by _____

this _____ day of May, 1990.

_____

ADDENDUM A

TEXT OF STATUTES AND CONSTITUTIONAL PROVISIONS

Rule 18(e)(4), Utah Rules of Criminal Procedure provides:

> (e) The challenge for cause is an objection to a particular juror and may be taken on one or more of the following grounds:
>
> . . . . .
>
> (14) that a state of mind exists on the part of the juror with reference to the cause, or to either party, which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals or common notoriety, if it satisfactorily appears to the court that the juror can and will, notwithstanding such opinion, act impartially and fairly upon the matter to be submitted to him.

Amendment VI to the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defence.

Article I, § 12 of the Utah Constitution provides:

> **Sec. 12. [Rights of accused persons.]**
> In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own

behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

ADDENDUM B

officer?

THE COURT: I will instruct you, members of the jury panel, at a later point in this trial that you are to give no more or less credibility to the testimony of a law enforcement official than you would to any other witness. The fact that they are employed as a law enforcement officer does not give more or less credibility to their testimony. Now, having stated that, are there any among you who are so persuaded that law enforcement officers are more credible or less credible than other witnesses that you couldn't be fair and impartial in judging their testimony? If so, raise your hand.

No hands are raised.

MR. LOYD: Thank you, your Honor. Could you inquire if any of them -- I believe you asked them if any of the jurors had been accused of a forgery type crime. Could you ask if any of their close friends or relatives have ever been the victim of forgery, theft, or any crime involving fraud or pecuniary loss?

THE COURT: Are there those among you first, members of the panel, who have yourselves been the victim of a forgery or a crime involving deception or fraud? If so, I want you to raise your hand.

Mr. Hoyt, you yourself have been the victim of such a circumstance?

MR. HOYT: Yes, sir. My wallet was taken when I was in California and my credit card was used.

THE COURT: Very well, and Mr. VanLeeuwen?

MR. VANLEEUWEN: I was in Brazil at the time that they stole checks and wrote about five grand on my account.

THE COURT: Very well. No other hands are raised, Counsel.

Those of you, Messrs. Hoyt and VanLeeuwen, who have responded to that question -- oh, excuse me. Mr. Tyler?

MR. TYLER: Yes, I was robbed of some checks and a guy forged some checks on my when I lived in L.A. in '61.

THE COURT: Very well. Thank you, Mr. Tyler. No other hands are raised.

Those three of you who have responded, recognizing that this is a different time and place and circumstance, would that experience, having been the victim of that type of a crime, affect your ability to be fair and impartial in this case, that is, would you be unable to set aside that experience and hear the evidence in this case and rule on the evidence based upon what you hear and the credibility of the witnesses? If you would not be able to do so, I want you to raise your hand.

No hands are raised, Mr. Loyd.

MR. LOYD: Thank you, your Honor.

THE COURT: Excuse me, Ms. West?

MS. WEST: Getting back to the second half of that question that I believe you were going to answer, I have a family member who has been convicted of a felony for forgery.

THE COURT: Very well. Is this a close family member, ma'am?

MS. WEST: Sister.

THE COURT: All right. Thank you, Ms. West.

Insofar as this Court is concerned, Ms. West, would that experience affect your ability in this case to be fair and impartial?

MS. WEST: No.

THE COURT: Do you believe you could set aside that circumstance?

MS. WEST: Yes.

THE COURT: Very well. Thank you.

MR. LOYD: Your Honor, my last question, I think you asked this in general, but whether or not any of the jurors have such pressing personal business that they would not be able to focus their attention on this case during the trial and deliberations.

THE COURT: I did ask that question, Counsel. Recognizing, of course, that the jurors are taken out of their daily lives to be here, and by observation is that

they've all responded they would perform their duties in this case unfettered by those concerns.

You pass the jury for cause, Mr. Loyd?

MR. LOYD: No, I don't, your Honor.

THE COURT: Counsel approach the bench.

(Whereupon, discussion was held at the bench out of the hearing of the Reporter.)

THE COURT: All right, Counsel, based upon our discussions at the bench, you may now take your peremptory challenges.

Members of the jury panel, we're now at the point in this trial when the parties and their counsel have the opportunity to determine which of you will be serving on the jury in this case. You have observed up to this point in time that I've asked you certain questions that bear upon your qualifications to serve as jurors and have made determinations as to which of you is qualified. Through the process now called peremptory challenge, each party has the opportunity to directly determine which of you will be serving as jurors. Since this is a criminal case, each party will have four peremptory challenges and may exercise those challenges for any reason whatsoever, whether that be great or slight. It is important for you to understand, however, that in the event you are not chosen as a juror here, you should not take the matter personally for the